Office of District Director

Received

Sept. 29, 1968

UNITED STATES GOVERNMENT

MEMORANDUM SW 73/40.20C

Date: September 28, 1966

To: District Director
El Paso, Texas El Paso, Texas

From: E. W. Myers, Assistant Regional Commissioner
Administrative Services, Southwest Region

Subject: Your ELP 71/4-C dated September 21, 1966: Scheduling Sunday overtime does not apply to Sunday overtime for employees engaged in inspection duties. Such scheduling is contrary to Service policy, (AM 2818.04).

The reason for this is to avoid the duplication of paying 1931 Act overtime (by operation of law) and 1945 Act overtime for a day which could be interpreted as being part of the basic work week (by reason of its being scheduled).

PETITIONER'S EXHIBIT 5

LETTER DATED MAY 19, 1970

FROM JOSEPH E. DUPUIS

SYS 71/25-C

L. C. Martindale, Associate
Deputy Regional Commissioner,
Management, Southwest Region

Joseph E. Dupuis, Officer in Charge
San Diego Border Station, San Ysidro,
California

Letter of Associate Deputy Regional Commissioner, Management, Southwest Region, of April 7, 1970, SW 73/40.13 and 73/40.14P, and copy of Comptroller General decision No. B-167804

The copy of the above cited Comptroller General decision referred to above has posed several problems in connection with the way immigration inspectors are scheduled to work at this port.

In the first place, and as a result of research because of that decision, I find the intermittent immigration inspectors have been regularly scheduled for Sunday duty in violation of your letter of May 9, 1967, SW 73/40.13-C. That letter makes no differentiation between intermittent and regular immigration inspectors. It states, "Please discontinue scheduling immigrant inspectors for Sunday duty on Form G-259". In line with that letter, and for other operational reasons, I have recently issued instructions that the intermittent immigration inspectors will not work on Sundays.

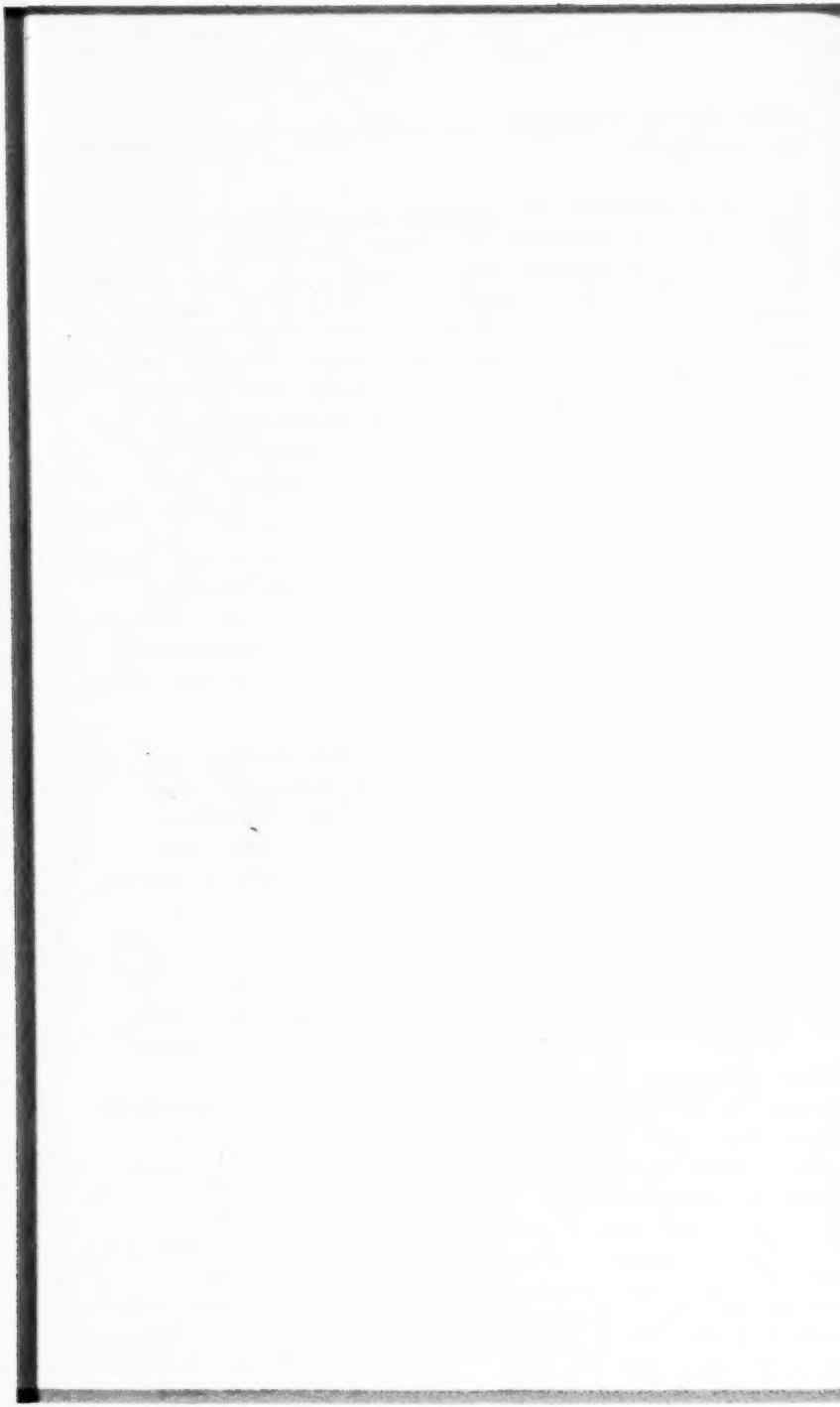
I further find that as a result of that letter, the then Officer in Charge had been forced to make two work assignment schedules for this port. One G-259 has been regularly sent to the Regional Office since that date showing no immigration inspectors assigned on Sundays. The file copy at this port is

then being changed to show all the officers so assigned.

It is a matter of common knowledge to everyone that this port is open to serve the public on a séven day a week, 24 hour a day basis. To admit that all officers can be scheduled off duty Sunday and then provide more coverage on that day than on any other day on an emergency short time basis without advance planning and prearrangement is to stipulate an unreasonable possibility. If it were tried, and prearrangement not made, any officer, and the entire force is involved, could apparently insist on not definitely stating whether he would be available until a few hours before the Sunday shift for which he is being asked to cover. This, in addition to causing an impossible operational situation, would apparently entitle him to "roll back" time.

All of the file copies of Forms G-259 on file at this office show all regular immigration inspectors assigned for definite hours of duty on Sunday for at least two weeks in advance. This, as indicated above, is because it is absolutely necessary to know in advance who will work and when they will work in order to be operationally prepared to meet commitments and the press of business as usual, or in the case of Sunday at this port, considerably more than usual.

This unusual arrangement has further brought about a situation where officers at this port are not assigned two consecutive days off. The agreement between the United States Immigration and Naturalization Service and the A.F.G.E., page 7, Article 11, "Tours of Duty:, item (2) states, "The administrative work week shall be seven consecutive days Sunday through Saturday. The basic work week shall be scheduled on 5 days, Monday through Friday, where possible and



the two days outside the basic work week shall be consecutive." Your letter of May 9, 1967, indicates the basic work week to be Monday through Saturday.

It is immediately apparent, of course, that at this port, since inspectors are not assigned on Sunday but all are actually working, the two consecutive days off are impossible.

It appears to me that a contention that all officers can be off duty on Sunday at any 24 hour a day, seven day a week office is not supportable, and perhaps some consideration should be given to having only one work schedule showing factual assignments with Sunday being included in the basic work week as operationally required.

I am bringing this matter to your attention because I desire assurance that this method of scheduling if it is to continue meets with Service approval, and secondly, so that I may properly answer inquiries from employees from a standpoint of management objectives.

CC; District Director
Los Angeles

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1974

TOM S. ACUNA, ET AL., Petitioner No. 259-80

ARTHUR C. ARCHIBALD, ET AL., Petitioner
No. 292-70

COURT P. ALLEN ET AL., Petitioner
No. 349-70

CECIL B. BARNETT, ET AL., Petitioner
No. 454-70

RODNEY S. CRAFT, ET AL., Petitioner
No. 203-72
v.
UNITED STATES, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF CLAIMS

PROOF OF SERVICE

State of California)
) SS
County of San Diego)

ROBERT C. BAXLEY after first being duly sworn, deposes and certifies that, on this 14th day of January, 1974, pursuant to Rule 33 he served the within Petition for Writ of Certiorari to the United States Court of Claims by mailing, postage prepaid, three copies of the Petition to the Attorney General

of the United States, Civil Division, Department of Justice, Washington, D. C., 20530, Counsel for the Respondent. I further certify that all parties required to be served have been served.

Robert C Baxley

ROBERT C. BAXLEY
1059 Tenth Avenue
San Diego, California
92112
Counsel for Petitioner

Subscribed and sworn to
before me this 14th day
of January, 1974.

Frank A Frye

Notary Public
in and for said County and State.